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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AUHZARAY DELYNN FOSTER,

Defendant.

Case No. 2:23-cr-00180-JCM-MDC

**ORDER GRANTING  
GOVERNMENT'S MOTION TO HOLD  
IN ABEYANCE DEFENDANT'S  
MOTION TO DISMISS**

This Court has read and considered the Government's Motion to Hold in Abeyance Defendant's Motion Dismiss, filed on May 23, 2024. The Government's Motion is GRANTED. The Court hereby finds as follows:

(1) Defendant's Motion will be held in abeyance until a decision on the government's petition for rehearing *en banc* in *United States v. Duarte*, 2024 WL 2068016 (9th Cir. 2024), or for 60 days, whichever is earlier.

(2) The Court further finds that this period of time is excludable in computing the time within which the trial must commence, pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and (B)(ii).


(3) The Government's Motion also provides good cause for a finding of excludable time pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(D).

1 (4) Once the petition for rehearing *en banc* in *Duarte* is resolved, the Court will set  
2 a hearing at which time it will consider defendant's Motion. Until then, defendant's Motion  
3 is not "under advisement" within the meaning of 18 U.S.C. § 3161(h)(1)(H) because the  
4 disposition of the government's *en banc* petition by the Ninth Circuit is necessary to the  
5 Court's disposition of the Motion.

6 (5) Nothing in this stipulation shall preclude a finding that other provisions of the  
7 Speedy Trial Act dictate that additional time periods be excluded from the period within  
8 which trial must commence. Moreover, the same provisions and/or other provisions of the  
9 Speedy Trial Act may in the future authorize the exclusion of additional time periods from  
10 the period within which trial must commence.

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12 IT IS SO ORDERED.

13 DATED June 13, 2024.

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16 THE HON. JAMES C. MAHAN  
17 UNITED STATES DISTRICT JUDGE  
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